

R E M A R K S

Regarding the '112 objection, and specifically the statement that in claim 19 the statement, "the weight of all three A ingredients", it is believed and urged that such antecedent basis is found in claim 18 from which claim 19 depends. Note in claim 18 the statement, "wherein there are only three of said A ingredients or only three of said B ingredients". The same argument is urged for sufficient antecedent basis in claim 20. The reference Singh does not teach or suggest claim 18 in its totality, or dependent claims 19 or 20 in their totalities. Singh concerns manufacturing pet food according to individual pet profiles, using a computer, not pet food distribution; or seasonal distribution modifications.

It is noted that Examiner recognizes, at page 3 of the Action, that, "neither teaches that there are only three ingredients; and that Singh does not teach, "which (of his) components would be which (A, B or C), and which would be increased or decreased". As to the specific art (Singh) rejection of claims 19 and 20 on page 5 of the Action, Examiner's reason for rejection (i.e. the claims 19 and 20 formulation of ingredients "could" as calculated for a respective pet "meet these limitations") is

respectfully believed and urged to be erroneous. See the refutation of the "could" or "can" test in the following:

The U.S. court of Appeals for the Federal Circuit has stated that, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F2d 1260, 1266, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). The "manner" suggested by Examiner is a mosaic filling process.

Accordingly, claims 18, 19 and 20 are urged not to be unpatentable based on Singh, and are respectfully urged to be allowable. Further in this regard, nothing in Singh suggests the "specific" formulations in claims 19 and 20, or the totalities of these claims. The "could be" text referred to at page 3, next to last paragraph, is also urged to be erroneous as applied to all claims referring to A, B and C ingredients, for the above reasons.

Base claim 1 has been amended to refer to:

f) during a two month period progressively

increasing selected amounts of said A ingredients from initial levels to higher levels for distribution in said basic formulation to selected points of sale subject to relatively cool climate conditions, to enhance pet nutrition in such cooler conditions,

- g) and during a two month period progressively decreasing selected amounts of said B ingredients from initial levels to lower levels for distribution in said basic formulation to selected points of sale subject to selectively warm climate conditions, to enhance pet nutrition in such warmer conditions.

See for example Figs. 3 and 4 and the explanation of the transition period progressive changes at pages 15 and 16. Clearly Singh fails to suggest Figs. 3 and 4, and fails to suggest the transition periods 20 and 21, within the two month periods as seen in Figs. 3 and 4, and as claimed, which contribute materially to the unusual objectives of the invention. Accordingly, base claim 1 and all dependent claims are urged to be allowable.

Serial No.10/735,183

Added claim 21 defines the timing, including transition periods, in greater detail. No art including Singh teaches or suggests this, whereby dependent claim 21 is additionally urged to be clearly allowable. Singh clearly fails to suggest it on an obviousness or "inherency" basis.

Allowance is respectfully urged.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'William W. Haefliger', is written over a horizontal line.

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